

In the Matter of License No. 105431 and Merchant Mariner's  
Document No. Z-157105  
Issued to: SVERRE O. PEDERSEN

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

656

SVERRE O. PEDERSEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 22 September, 1952, an Examiner of the United States Coast Guard at Boston, Massachusetts, suspended License No. 105431 and Merchant Mariner's Document No. Z-157105 issued to Sverre O. Pedersen upon finding him guilty of negligence based upon three specifications alleging in substance that while serving as Master on board the American SS VENTURA under authority of the license above described, on or about 28 November, 1951, while said vessel was overtaking the trawler LYNN in the approaches to Boston Harbor, he failed to observe his duty to keep clear of the LYNN (First Specification); he wrongfully approached dangerously close to the LYNN before sounding a passing signal (Second Specification); and he unlawfully attempted to pass the LYNN without having received an assenting signal from her (Third Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. By agreement of all parties concerned, this hearing was conducted jointly with that of the pilot of the VENTURA, Alonzo L. Hodgdon. Appellant was represented by attorneys of his own choice who also represented Captain Hodgdon. Appellant entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and Appellant reserved the right to make an opening statement later if considered necessary.

The Investigating Officer introduced in evidence the testimony of the Master and helmsman of the LYNN, and several documentary exhibits. The testimony of Appellant, Captain Hodgdon, the Chief Mate and helmsman of the VENTURA, all of whose testimony was taken before the Marine Board of Investigation, was stipulated in evidence. No additional evidence was offered in behalf of Appellant or Captain Hodgdon.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both

parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered the order suspending Appellant's License No. 105431, Merchant Mariner's Document No. Z-157105, and all valid licenses issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of five months - three months outright and two months on twelve months probation from 4 December, 1953.

From that order, this appeal has been taken, and it is urged that:

"(1) That the Board of Investigation clearly indicated that the conduct of the vessel LYNN and the master in charge of her was in the minimum a jointly contributory cause of the casualty concerned and the failure to act under RS 4450 against the personnel of that vessel was prejudicial and inequitable to the personnel on board the VENTURA who were alone subjected to the second proceedings.

(2) The Commandant of the Coast Guard exhausted his statutory authority after the proceedings of the Marine Board of Investigation and his own approval thereof without a written suspension or revocation order; and the later proceeding convened on August 21, 1952 was beyond and without the authority of the Commandant under Section 239, Title 46, U.S.C.A. (RS 4450)."

APPEARANCES: Messrs. Joseph M. Brush of New York City, Thomas H. Walsh of Boston, Leo F. Glynn of Boston, and Lionel P. Marks of New York City, of Counsel.

Based upon my examination of the record submitted, I hereby make my Findings of Fact which are identical to those of the Examiner except for a few minor modifications, additions, and deletions.

"On 28 November, 1951, Sverre O. Pederson was serving under the authority of his License No. 106431 as Master aboard the VENTURA, a C-2 type turbo-electric driven tanker, which in the late afternoon of that day was standing out of Boston Harbor. After 1630, when the VENTURA's tug and docking master departed, Captain Pedersen remained on the bridge but Pilot Alonzo L. Hodgdon was conning the vessel. The VENTURA was in ballast and was drawing 20 feet forward and 21 feet aft.

"The vessel proceeded out the channel on slow and 1/2 ahead bells and at 1703, as she approached Deer Island Light, the person charged left the bridge for supper. At 1713, in the absence of Captain Pedersen the Pilot put the VENTURA on full ahead and the vessel then proceeded out the North Channel on a course of 029° true.

"As the vessel proceeding out the North Channel, she passed two beam trawlers and to the

knowledge of the Master gave a passing signal to at least one of them. At 1720, he returned to the bridge and thereafter was standing in the wheelhouse behind the engineroom telegraph. Appellant saw a vessel subsequently identified as the Trawler LYNN, a steel hull beam trawler 102 feet long, less than a half mile ahead of the VENTURA and slightly on her starboard bow. The VENTURA at that time had just cleared the North Channel, was settling on a heading of 068° true and was still at her full speed ahead of about 13 knots. The Trawler LYNN was then on a course of about 066° true and making good a speed of approximately 8-1/2 knots.

"The vessels proceeded on the courses and speeds above indicated with the VENTURA overtaking for the next five minutes by which time the LYNN was about 250 yards ahead of and slightly on the starboard bow of the VENTURA. It was then apparent that the passage of the two vessels would be close and when the Pilot aboard the VENTURA saw that the courses were converging he sounded a two-blast whistle signal and the LYNN altered her course to port. Up to that time no whistle signals of any kind had been given by either vessel. The Pilot ordered left full rudder followed almost immediately by the Master's ringing up 'stop the engines' followed by 'slow astern,' 'half astern' and at 1725-1/2 'full astern.' The VENTURA had had no indication that the LYNN had sighted her and no signal was given by the LYNN in answer to the two-blast signal. No further signals were given by either vessel.

"At approximately 1727 the vessels collided, with the bow of the VENTURA striking the LYNN on her port quarter. The collision occurred in a location identified as 42° 22' 27" North, 70° 54' 8" West. By the time of the collision the engines of the VENTURA were at full astern and her speed had been reduced to approximately 8 knots.

"The effect of the contact between the two vessels was to gradually press down the LYNN and finally roll her over on her starboard side. She foundered very shortly after the VENTURA had passed clear of her. Of a complement of 17 men aboard the LYNN there were only two survivors; namely, the master who at the time of the collision was in the wheelhouse and the helmsman. There was no substantial damage to the VENTURA.

"From the time that the Master came to the bridge at 1720, he made no effort to overrule or relieve the Pilot nor did he make any suggestion with reference to maneuvers. The Master gave no orders during the time that he was on the bridge except the above-mentioned orders to the engineroom.

"Throughout the passage out the North Channel and up to the point of the collision the VENTURA was overtaking the LYNN within the meaning of the Inland Rules to Prevent Collisions of Vessels. The collision occurred on the inland waters of the United States as defined by 33 CFR 82.

"At all times leading up to the instant of the collision the visibility was excellent and the sea was moderate. The tide was at slack water. The Trawler LYNN was well lighted and was at all times until just before the collision, when she disappeared under the bow of the VENTURA, well in sight of the person charged on the bridge of the VENTURA.

"Captain Pedersen has been employed in the merchant service for over thirty years. He has served as a master for over twenty years with the Texas Company and has the reputation of being one of the better masters employed by that company. He has no record of previous misconduct, incompetence or negligence either with the Coast Guard or with his employer."

### OPINION

As stated by the Examiner in his worthy decision, Appellant was on the bridge of the VENTURA in ample time to have averted the collision and it was his responsibility as Master of the ship to have relieved the Pilot and maneuvered the VENTURA out of danger.

Appellant contends that the failure to take action against the license of the Master of the LYNN, for his negligent alteration of course about two minutes before the collision, has prejudiced Appellant's cause. As stated in the companion case to this one (HQ Appeal No. 655), the VENTURA had been maneuvered into a position where risk of collision existed prior to the time when the LYNN altered her course. Hence, there is no merit in that contention.

The other point raised on appeal is that the Commandant of the Coast Guard has no authority to take this action under R.S. 4450, as amended (46 U.S.C. 239), since the hearing conducted was the second investigation of the incident and, hence, there was no statutory authority for the hearing.

The Marine Board of Investigation was made up of Coast Guard Officers and it was a preliminary step to the preferment of a charge and specifications against Appellant's license and document. Subsequent to the investigation, this hearing was conducted by a Civil Service Examiner of the Coast Guard who had nothing to do with the investigation. The Examiner was acting pursuant to the authority, delegated to him by the Commandant, to make the initial decision revoking or suspending Appellant's license under 46 U.S.C. 239(g). Also as provided for in 46 U.S.C. 239(g), Appellant has now appealed the initial decision of the Examiner to the Commandant. This has been the interpretation repeatedly placed upon 46 U.S.C. 239 during the period of its administration by the Department of Commerce and the Coast Guard.

"It is the settled rule that the practical interpretation of an ambiguous or doubtful statute that has been acted upon by officials charged with its administration will not be disturbed except for weighty reasons (citing cases of the Supreme Court)."

Brewster v. Gage (1930), 280 U.S. 327, 336.

And since the advent of the Administrative Procedure Act which requires that such a hearing be conducted by an Examiner who has not performed investigative or prosecuting functions in the case, Appellant's interpretation that the Commandant could have suspended Appellant's license when he acted on the report of the Marine Board of Investigation cannot be correct. Therefore, this argument also is lacking in merit.

### ORDER

The Order of the Examiner dated at Boston, Massachusetts, on 22 September 1953, ~~APPROVED~~ **APPROVED**.

Merlin O'Neill  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 12th day of June, 1953.